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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

June 18, 2002

JUN 18 2002

HAND DELIVEREDCommissioner Marc Spitzer
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

DOCKETED BY	CAP
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Re: Docket No. RT-00000F-02-0271 [Section 252(e)]
Docket No. T-00000A-97-0238 [Section 271]

Dear Commissioner Spitzer:

On Monday, you sent all parties to this docket a short letter regarding seven business-to-business agreements filed in Docket No. RT-00000F-02-0271. You have asked for comment on provisions in those agreements in which parties agreed to resolve commercial issues with Qwest outside the context of regulatory proceedings.

Five of these agreements relate to settlement of challenges that third parties raised to the merger of Qwest and U S WEST in 1999-2000. During the merger proceedings, regulatory commissions encouraged Qwest and U S WEST to work with potential objectors to address their concerns about the merger, as a way of expediting the approval process. Accordingly, Qwest and U S WEST reached agreements with those parties settling pending disputes, and the third parties withdrew their oppositions to the merger. Those agreements could not have affected or tainted the integrity of this Commission's Section 271 proceedings, as the parties to those agreements did not agree to refrain from participation in any Section 271 proceeding. For example, AT&T and U S WEST entered into an agreement in which AT&T withdrew its opposition to the merger; however, AT&T has quite vigorously contested Qwest's Section 271 applications throughout its region.

Only two of the seven agreements referred to by Commissioner Spitzer mentioned Section 271 proceedings. Those two agreements in no way interfered with the Section 271 proceedings before this Commission. Nothing in either agreement prohibited any party from responding to any government inquiries. Thus, it is improper to characterize any of these agreements as a "gag order." The purpose of these settlements was not to suppress complaints but rather to *resolve* them. Once a party's concerns have been addressed, it follows that the party withdraws from participating in the regulatory proceeding.

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The agreement with Eschelon Telecom, Inc., dated November 15, 2000, is a good example of a settlement that makes participation in a regulatory process unnecessary. This business-to-business agreement provides, quite simply, that Qwest and Eschelon will "(1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement; (2) arrange quarterly meetings between executives of each company to address unresolved and/or anticipated business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business-to-business dispute solutions." Furthermore, "*if* an agreed upon Plan is in place by April 30, 2001, Eschelon agrees to not oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements" (emphasis added). As such, Eschelon and Qwest agreed to deal in good faith with each other to create and execute a plan to address business issues between the companies. *If it worked*, the parties agreed that this plan also would satisfy any concerns Eschelon might have regarding Qwest's opening of its network and Section 271 efforts; if it did not, Eschelon was free to say so, to the ACC or to anyone else. In the same way, Eschelon's agreement to not oppose Qwest's Section 271 application was not linked to any payment, but was expressly contingent upon the parties' ability to agree upon *and implement* a plan that satisfied Eschelon.

As this Eschelon agreement illustrates, the purpose of the negotiations was to resolve the issues that the CLEC might otherwise have raised in the Section 271 proceeding. Given that the agreement resolved those issues, Eschelon had no issues to raise before the ACC; that was the premise of this agreement.

Indeed, on November 3, 2000, Eschelon informed the Commission and all parties in the Section 271 docket that it was working with Qwest to resolve its provisioning issues. Eschelon stated: "Eschelon will continue to have discussions with Qwest to try to resolve these issues, but will participate in the workshop currently scheduled for November 29 through December 1 if sufficient progress is not made before that time." A copy of that letter is enclosed as Attachment A. Thus, there was nothing "hidden" about Qwest's and Eschelon's working together to resolve issues outside of the Section 271 process and that if those issues were resolved, Eschelon would not participate further in that docket.

Also, Eschelon has, in fact, actively participated in the Section 271 Change Management Process ("CMP"). As shown on the CMP website, Eschelon regularly participated in the CMP monthly meetings and CMP redesign sessions. For example, of the forty-four CMP redesign core team meetings, Eschelon participated in thirty-nine. Eschelon participated in every one of the twenty-three product process and system meetings in 2001 and 2002. Further, of the one hundred ninety-two systems change requests from CLECs, Eschelon submitted sixty-six. Eschelon also submitted fifty-four, or fifty percent, of the one hundred and eight product-process CLEC change requests. Thus, Eschelon provided substantial information for the important redesigning of Qwest's processes to the benefit of all CLECs.

Furthermore, in connection with its OSS tests for the ROC, KPMG Consulting reviewed its test to determine whether such agreements tainted its review of Qwest's operations support systems and determined that they had not.

Similarly, the agreement with XO makes clear that it resolved 271 Checklist issues to the satisfaction of both parties. XO therefore agreed to state that Qwest complies with the 271 Checklist because the issues had been resolved. In any event, XO intervened in the Section 271 docket in February

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of 1999. It participated in several workshops, the last of which was held in October of 1999. XO did not actively participate in the Section 271 process between October of 1999 and December 31, 2001, the date on which the agreement was executed.

These two agreements have not adversely affected this Section 271 docket. The ACC is in the final stages of an exhaustive proceeding, one of the most complete in the nation, to examine the question of whether Qwest has met the requirements of Section 271 of the Telecommunications Act. The Commission has conducted over three years of workshops and hearings on a broad spectrum of issues. The Commission has conducted a comprehensive test of Qwest's operations support systems. It has heard extensive comment from AT&T and other CLECs. No party could fairly suggest that the record in this matter is incomplete -- indeed, it far exceeds the scope and detail of virtually all ACC proceedings.

It is correct that Qwest and certain CLECs reached agreement to address issues between them outside of the regulatory process. However, Qwest believed at the time and believes now that such agreements are in the public interest. Instead, here Qwest and its wholesale customers agreed to work out their issues among themselves. The parties expected that this approach would result in better business relations, faster and more efficient resolution of differences, and ultimately better service to the public.

It is widely recognized that private settlement of disputes is to be favored over litigation. The public interest is served better and more efficiently if parties resolve their disputes on their own. *See Ahern v. Central Pacific Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988) (citing commitment to the rule of law that favors and encourages compromise settlements, the overriding public interest in settling litigation, sound public policy of settlements, and conservation of judicial time and expense provided by settlements). This is true with respect to settlement of ongoing proceedings. It also is good policy for parties to work out differences without filing time-consuming complaints.

It should go without saying that no party has an obligation to expend the time and resources necessary to participate in regulatory proceedings such as the Section 271 docket. It is perfectly reasonable for a party to conclude that it can advance its interests more effectively by building a less confrontational relationship with a business partner committed to addressing business issues outside the regulatory process. Qwest itself believed that it could do so, and some CLECs freely decided to work through private processes rather than regulatory confrontation.

Qwest is not surprised that other parties are trying to paint these agreements as somehow sinister. These parties have demonstrated that, notwithstanding the excellent work of this Commission and its staff over many years, they will never concede that the record here is complete. But the bottom line is that they are simply arguing that the Commission should second-guess the business decisions of carriers who choose to resolve matters outside the regulatory process. This is the antithesis of the views of the commentators such as those you noted. In a market such as this one, the public interest favors business-to-business dispute resolution rather than "old school" regulatory confrontations.

Qwest would note that its business-to-business negotiations with specific CLECs led to resolution of issues that benefited all CLECs. Qwest learned about CLEC needs in ways that generally improved its efforts to provide CLECs with access to the network. As Qwest implements a wholesale service process to address an issue for one CLEC, such as Eschelon, that process is implemented uniformly and all CLECs benefit from the improved process.

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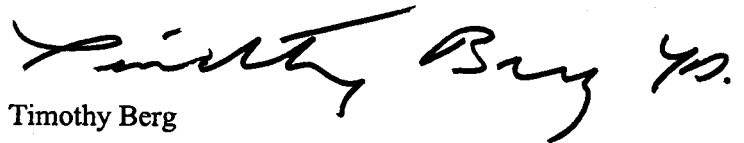
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The Staff Report in Docket No. RT-00000F-02-0271 recognizes the legal uncertainty regarding which contractual arrangements between ILECs and CLECs need to be filed and approved before they take effect under Section 252(a) and which do not. The Staff Report also recognizes that Qwest operated in good faith in this area. The legal issue of which ILEC-CLEC agreements must be filed pursuant to Section 252(a) is also before the FCC, and while it is pending, Qwest will comply with Staff's report including the filing of the agreements listed on pages 17-18 of that report. Qwest will also comply with the standards set forth in that report on a going-forward basis.

Seven other state commissions have considered and rejected the argument advanced by AT&T that the issue of Qwest's confidential business-to-business agreements warrants a delay in its consideration of Qwest's Section 271 application. The Commission should also proceed with its almost completed consideration of Qwest's Section 271 application in Arizona.

Sincerely,

FENNEMORE CRAIG



Timothy Berg

-and-

QWEST CORPORATION

Todd L. Lundy

Arizona Policy and Law

TB/clv

Enclosure

cc: Chairman Mundell
Commissioner Irvin
Docket Control (Original plus 20 copies)
All parties of record in both dockets

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Our File Number 39883-00001

November 3, 2000

Arizona Corporation Commission
Utilities Division - Docket Control
1200 West Washington Street
Phoenix, AZ 85007

Re: Arizona Section 271 Proceeding
Docket No: T-00000A-97-0238

Eschelon Telecom, Inc. is having continuing discussions with Qwest to try to resolve certain provisioning issues as set forth in the attached September 29, 2000 letter from F. Lynne Powers. Eschelon will continue to have discussions with Qwest to try to resolve these issues, but will participate in the workshop currently scheduled for November 29 through December 1 if sufficient progress is not made before that time. If Eschelon participates in the workshop, it will be represented by Karen Clauson and Garth Morrisette, as well as David Kunde, Executive Vice President of Network and Engineering, or a senior member of his organization.

Very truly yours,

LEWIS AND ROCA LLP



Thomas H. Campbell

THC/bjg
Enclosure

cc: All Parties on Service List



September 29, 2000

Ms. Judy Tinkham, *by facsimile & U.S. mail*
Qwest Corporation
200 South 5th Street
Suite 2400
Minneapolis, MN 55402

Ms. Judy Rixe, *by facsimile & U.S. mail*
Qwest Corporation
200 South 5th Street
Suite 2400
Minneapolis, MN 55402

Re: Coordinated conversions of active customers from Qwest to Eschelon
("cutovers" or "hot cuts")

Dear Judy and Judy:

For some time now, we have been dealing with a variety of problems that have occurred when we cut over customers from Qwest to Eschelon. We plan to review these issues with you at our meeting this week. The problems generally fall into five categories:

- Cut problems (e.g., no dial tone at customer premise after cut).
- Cuts appear successful on the day of cut, but troubles occur the next day or two.
- Cuts are scheduled, but Qwest cancels them on the scheduled date (often without notice to Eschelon).
- Cuts are held by Qwest for facilities, but Qwest performs the translations disconnect anyway and customer goes out of service. Much time and effort is wasted restoring service.
- Repairs are not performed or not performed adequately or in a timely manner.

Ms. Judy Tinkham
Ms. Judy Rixe
September 29, 2000
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These problems occur frequently, and they cause significant problems for us and our end-user customers. Please have the appropriate people present at our meeting, so Qwest will be prepared to discuss these issues with us.

We need to discuss how to resolve these issues technically, as well as financially. Qwest recently submitted a substantial bill to Eschelon for cutovers, most of which suffered from at least one of the above problems. The problems experienced outweigh the alleged value for which Qwest seeks payment. Qwest needs to adjust the bill substantially to reflect the inadequate service provided to Eschelon. See, e.g., Oregon Interconnection Agreement, Att. 7, ¶ 16.

Qwest has also agreed to let us know its position with respect to temporarily extending the LNP Out of Hours Managed Cut Side Letter Agreement while we discuss whether a different agreement is needed and, if so, the terms of that agreement. We did not receive a response last week and assume that the Side Letter Agreement is in effect until we mutually agree on the next step.

Sincerely,



F. Lynne Powers,
Vice President,
Customer Operations

cc: David Kunde
William Markert
Garth Morrisette

USWC (Qwest), *by overnight express*
Director - Interconnection Compliance
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U S WEST (Qwest) Law Department, *by overnight express*
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